

Interview Summary:

Applicant's representatives wanted to discuss the declarations submitted by Dr. Zha and Mr. Biltoft on 11/12/09.

With respect to Dr. Zha's declaration, applicant stated that Dr. Zha is an expert in the field and he categorically explained the merits of the cited prior arts and why one of ordinary skill in the art would not combine them. IN response, the Examiner stated that the declaration was only Dr. Zha's opinion, and there was no substantive evidence to overcome the prima facie case.

With respect to Mr. Biltoft's declaration, applicant stated that the declaration was to show commercial success. Applicant argued that they have shown a nexus between the claimed invention and the commercial success of the product by that declaration. In response, the Examiner stated that in the Examiner's opinion, such a nexus is not there. However, the Examiner stated that he would consult another Senior or Supervisory Examiner on this matter and provide a feedback of such consultation.

Accordingly, Mr. Duane Smith, SPE, AU 1797, was consulted on 2/23/10 at 3 PM, immediately after the interview, regarding the affidavit to evaluate the merit of the affidavit in terms of proving any unexpected result or commercial success, and SPE Smith agreed with the Examiner Menon on this matter. Here are some particulars of the discussion:

(1) The market share of 25% and the increase in sales of 500% over the past four years is not linked to the limitations of claim 1. The declaration does not provide

Art Unit: 1797

any evidence that the 500% increase in sales is correlated to the method of backwashing the membrane filtration system.

(2) While the sales of the system which perform according the method of claim 1 may comprise 50% of the total sales of membrane systems by Siemens, there is no evidence that such sales had become possible because of the process claimed in claim 1.

(3) the 25% capital cost reduction by elimination of the backwash pump and a holding tank, while resulted from switching the process of backwashing from using permeate to using a gas, is not an unexpected result: it is only expected. Similarly, the 5% reduction in backwash time, and the resulting increase in operating efficiency of 1% are all not unexpected. Reduction in wastewater by eliminating backwash water is also not an unexpected result. All these results, while reducing cost and backwash time, are not linked to the commercial success.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S. Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vickie Kim can be reached on 571-272-0579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

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/Krishnan S Menon/
Primary Examiner, Art Unit 1797